IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. NO. 626 OF 1987
and
Cross-Objection No.30-CII of 1988
Date of Decision: 2.5.2007

United India Insurance Company

.....PETITIONER

VERSUS

Kanna and others

.....RESPONDENTs

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR

Present: Mr.Vinod Chaudhary, Advocate
for the appellant.

Mr.Nilesh Bhardwaj, Advocate
for the Claimant-respondents.

**

M.M.KUMAR, J.

This order shall dispose of the appeal filed by the United India Insurance Company Limited and the cross objection filed under Order 41 Rule 22, read with Section 151 C.P.C. by the claimant-respondents No. 1 to 5.

The claim made by the claimant-respondents emerges from an accident which had taken place on 15.9.1984. The deceased Kajod, aged 21 years and Bhanwar Lal, injured claimant- respondent along with sixteen other persons had gone to Delhi from Bharni to sell their vegetables in

truck bearing registration No.RJX/858. The driver of the truck was Chunni Lal, one of the claimant-respondents. On 15.9.1984, after selling the vergetables they started back to their village Bharni in the same truck. On the way, when the truck reached ahead of Dharuhera, it turned turtled allegedly on account of the negligence of the driver, who was driving at a high speed. The occupants of the truck had sustained injuries. The deceased and other injured were admitted in the B.D.M. Hospital, Kot Putli, where Kajod succumbed to his injuries. The claimant-respondent Bhanwar Lal, aged 25 years had fractured his leg. On account of the death of Kajod, the claimant-respondents have claimed a sum of Rs. 5,05,600/- as compensation on account of his death claiming that they were all dependent upon him. The injured Bhanwar Lal, claimant-respondent has claimed Rs.7,77,000/- as compensation on account of receiving grievous injuries and taking treatment for the same along with interest @ 12% per annum besides the costs. The appellant Insurance Company had taken the stand that truck No.RJX/858 had never been involved in the accident and neither Bhanwar Lal nor any other person were travelling in the truck, although the factum of insurance in respect of the offending truck with the appellant Insurance Company has not been denied. It has however, been asserted that its liability could be fixed up to a limit of Rs.50,000/-. It has also been pleaded that the deceased Kajod and injured Bhanwar Lal had no authority to travel in a goods carrier vehicle. The driver was alleged to have no valid licence or permit from the competent authority.

On the issues, as to whether the accident was caused by the rash

and negligent driving of Chunni Lal and whether the injured and deceased were passengers in the vehicle, the tribunal has recorded a finding in para 13 of the award which reads as under:-

> "In view of the statement of PW1 Pehlad which is fully supported by that of PW2-Ram Chander and on the basis of the admitted fact that a criminal case under Section 304-A of the IPC is pending for causing the death of Kajod-deceased due to rash and neglegent driving of Chunni Lal-respondent before the Judicial Magistrate Ist Class, Rewari, it is proved that Kajod died and other persons suffered injuries in the accident which was caused due to rash and negligent driving of Chunni Lal-respondent. It is also stated by PW1 that he along with Kajod, Jaman Lal, Ram Chander and Bhanwar Lal etc. were carrying vegetables in the hired truck No.RJX/858 and after selling their vegetables, they were returning in the same truck next day at 7.00 P.M.. This part of evidence remains un-rebutted. Therefore, I hold that the deceased along with other persons was travelling in the truck in question at the time of accident. Accordingly, both these issues are decided in favour of the petitionerss and against the respondents."

In respect of issue, as to whether Chunni Lal had a valid licence at the time of accident, the tribunal has recorded a categorical finding that he had a valid licence for driving the heavy vehicles. The finding has been recorded on the basis of the statement made by Chunni Lal, RW-1, who had produced the licence in evidence and the failure of the Insurance Company to cross-examine him on the afore-mentioned issue.

On the basis of the findings recorded by the tribunal, the claimant-respondents were held entitled to compensation of Rs.68,000/-, on account of the death of Kajod. The tribunal had applied the multiplier of sixteen, keeping in view of the age of the deceased who was 21 years at the time of accident and the number of dependents. The tribunal had also referred to the age of his parents, who were dependent on him.

Mr. Vinod Chaudhary, learned counsel for the appellant Insurance Company has submitted that the tribunal has committed a grave error in law by fastening the liability on the Insurance Company because the owner of the vehicle was not entitled to carry the passengers on the truck which was insured as a goods vehicle. According to the learned counsel, in such a situation, the tribunal should have fastened the liability on the owner of the goods vehicle as has been provided by Section 95 (1) (b) (i). For the aforementioned proposition, he has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **New India Assurance Company Limited V. Asha Rani AIR 2003 SC 607.** In para 21 of the judgment in the case of **National Insurance Company Limited V. Baljit Kaur (2004)2 SCC 1** it has been argued that the judgment in the case of **New India**

Assurance Company Limited V. Satpal Singh (2000)1 SCC 237 has been overruled and, therefore, no benefit would be available to the petitioner-claimants.

Learned counsel has further submitted that in any case the liability of the Insurance Company cannot exceed Rs.50,000/- as no such obligation in the insurance cover has been under taken in that regard. He has placed reliance on the insurance cover Ex.RX.

Mr. Nilesh Bhardwaj, learned counsel for the claimant-respondents has submitted that the limitation of Rs.50,000/- is being invoked without substantiating the same from the insurance cover. It has not been pointed out from the insurance cover Ex.RX that the liability was so limited. He has also submitted that in case the liability is to be imposed on the driver and the owner by virtue of Section 95(1)(b)(i) of the 1939 Act then the rights of the claimant-respondents could not be effected thereby.

After hearing learned counsel for the parties and perusal of the record, I am of the considered view that the appeal as well as the cross-objections are liable to be dismissed. The accident in the present case had taken place on 15.9.1984, the claimant-respondents filed their claim petition on 14.3.1985 and the award by the tribunal was announced on 23.12.1986. Therefore, it is evident that provisions of Section 95 of 1939 Act would be applicable. Section 95 is reproduced hereunder for facility of reference:-

> 95. Requirements of policies and limits of liability.-
>
> (1) In order to comply with the requirements of this

Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed under Section 108 to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent specified in the policy to the extent specified in sub-section (2)--.

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the

death of , or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicles, or

© if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation.- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

> (2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely-
>
> (a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;
>
> xx xx xx xx

The aforementioned provision came up for consideration before Hon'ble the Supreme Court in Satpal Singh's case (supra) which proceeded on the assumption that these provisions are pari materia to Section 147 of 1988 Act and held as under:-

> " The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new

Act came into force.

The Division Bench of the High Court has rightly repelled the contention of the appellant-Insurance Company on the aforesaid score. We, therefore, dismiss these appeals."

The judgment in Satpal Singh's case (supra) has been overruled by Hon'ble the Supreme Court in the case of Asha Rani(supra). However, in Baljit Kaur's case(supra) their Lordships of the Supreme Court have clarified the legal position by applying the principle of prospective overruling. As a result, the Supreme Court in para 21 of the Judgment in Baljit Kaur's case (Supra) has clarified that the end of justice would be served if the Insurance Company was asked to satisfy the awarded amount in favour of the claimant-respondents and recover the same from the owner of the vehicle without filing a separate suit. It has further been held that the Insurance Company may initiate proceedings before the Executing Court as if the dispute between the owner and the insurer was the subject matter of determination before the tribunal as if the issue is decided against the owner and in favour of the insurer. The legal position has been clarified in Baljit Kaur's case(supra) and the same reads as under:-

"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and

equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interst of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

In view of the above, the appeal of the insurance company in

respect of claimant-respondents fails. However, the appeal of the insurance company in respect of its entitlement to make recovery from the owner is allowed to the extent as aforesaid. I am further of the view that there is no room for accepting the cross-objections, which are accordingly dismissed.

(M.M.KUMAR)
JUDGE

May 02, 2007
ap